

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

DAVON FENIX,

Plaintiff,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No.: 1:24-cv-0202 JLT SAB

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT REGARDING EXHAUSTION,
AND DISMISSING DEFENDANTS MILLER
AND CASAURANG FROM THE ACTION

(Docs. 37, 40)

Davon Fenix seeks to hold defendants Miller, Casaurang, and Soto liable for violations of his civil rights under the Eighth Amendment. (*See* Docs. 15, 24.) Defendants Miller and Casaurang seek summary judgment on the claims raised against them, asserting that Plaintiff failed to exhaust his administrative remedies. (Doc. 37.) Plaintiff did not oppose the motion.

The magistrate judge reviewed the undisputed evidence and found Defendants met their burden to demonstrate that Plaintiff did not exhaust his administrative remedies related to the claims raised against Miller and Casaurang. (Doc. 40 at 8-11.) Therefore, the magistrate judge recommended the Court grant the motion and dismiss the claims against Miller and Casaurang without prejudice. (*Id.* at 11.) In addition, the magistrate judge recommended the action proceed on the claim against Soto, who was not a party to the motion. (*Id.*)

The Court served the Findings and Recommendations on the parties and notified Plaintiff that any objections were due within 21 days. (Doc. 40 at 11.) The Court advised him that the

1 “failure to file objections within the specified time may result in the waiver of rights on appeal.”
2 (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).) Plaintiff did not file
3 objections, and the time to do so has passed.

4 According to 28 U.S.C. § 636(b)(1), this Court performed a *de novo* review of this case.
5 Having carefully reviewed the entire matter, the Court finds the Findings and Recommendations
6 are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 7 1. The Findings and Recommendations issued on April 25, 2025 (Doc. 40) are
8 **ADOPTED** in full.
- 9 2. Defendants’ motion for summary judgment (Doc. 37) is **GRANTED**.
- 10 3. Plaintiff’s claims against Defendants Miller and Casaurang are **DISMISSED**
11 without prejudice for failure to exhaust administrative remedies.
- 12 4. The Clerk of Court is directed to update the docket and terminate Miller and
13 Casaurang as defendants.
- 14 5. The action **SHALL** proceed on Plaintiff’s failure to protect claim against
15 Defendant Soto.

16
17 IT IS SO ORDERED.

18 Dated: **May 30, 2025**


UNITED STATES DISTRICT JUDGE